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bear-resistant containers (32–130 gallons) can be used. Two- to 6-cubic yard containers can be specifically designed by commercial vendors as bear-proof containers or have industry-standard lid locks to prohibit bear entry, depending on the need and location. For remote seasonal camps, garbage can be temporarily stored in steel drums secured with locking rings and a gasket, and removed from the site when transportation is available. Larger garbage containers, such as dumpsters or “roll-offs” (20 to 40 cubic yards), can limit bear-human interactions when the containers have bear-proof lids. Lids must be constructed of heavy steel tubing or similarly constructed with heavy expanded metal.

(2) *Preventive deterrence measures.* Preventive deterrence measures are those that can dissuade a polar bear from initiating an interaction with property or people. These measures provide for safe human use and do not increase the risk of serious injury or death of a polar bear. These are:

(i) *Acoustic devices.* Acoustic deterrent devices may be used to create an auditory disturbance causing polar bears to move away from the affected area. The reasonable use of loud noises, e.g., vehicle engines, automobile sirens or horns, and air-horns, where such auditory stimuli could startle a bear and disrupt its approach to property or people, is authorized. This authorization is limited to deterrent devices with a sound strength of no greater than 140 dB SPL to be deployed for no more than a 30-second continuous time interval. The use of commercially available air horns or other audible products used as perimeter alarms, which create sounds that fall below this upper limit, is acceptable.

(ii) *Vehicle or boat deterrence.* Patrolling the periphery of a compound or encampment using a vehicle, such as a truck or all-terrain vehicle (e.g., a snowmobile or a four wheeler), and deterring, but not chasing, polar bears with engine noise, or by blocking their approach without making a physical contact with the animal, is an acceptable preventive deterrence. Similarly patrolling an area in a small boat using similar methods is acceptable.

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(c) The deterrence guidelines are passive or preventive in nature. Any action to deter polar bears that goes beyond these specific measures could result in a taking and, unless otherwise exempted under the MMPA, would require separate authorization. The Service acknowledges that there will be numerous new techniques developed, or new applications of existing techniques, for deterring bears. The Service will work to establish a system for evaluating new bear deterrence applications and techniques and will update this set of guidelines with examples of future approved methods. Deterrence actions (other than the measures described in these guidelines) that do not result in serious injury or death to a polar bear remain permissible for persons identified in section 101(a)(4)(A) of the MMPA. Prior to conducting activities beyond those specifically described in these guidelines, persons should contact the Service’s Alaska Regional Office’s Marine Mammal Program for further guidance (for the location of the Alaska Regional Office see 50 CFR 2.2(g)).

[75 FR 61637, Oct. 6, 2010]

Subpart E—Depleted Species or Stocks [Reserved]

Subpart F—Transfer of Management Authority to States

NOTE: Regulations governing the transfer of management authority to States pursuant to section 109 of the Marine Mammal Protection Act for marine mammal species under the jurisdiction of the Secretary of the Interior are found at part 403 of this title.

[48 FR 22456, May 18, 1983]

Subpart G—Notice and Hearing on Section 103 Regulations

SOURCE: 41 FR 5396, Feb. 6, 1976, unless otherwise noted.

§ 18.70 Basis and purpose.

(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2), 1371(a)(3)(A), and 1371(b)) and these regulations authorize the Director, U.S.

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Fish and Wildlife Service, to: (1) Impose regulations governing the taking of marine mammals incidental to commercial fishing operations; (2) waive the moratorium and adopt regulations with respect to the taking and importing of animals from each species of marine mammals under his jurisdiction; and (3) prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut or Eskimo, respectively. In prescribing regulations to carry out the provisions of said sections, the act refers the Director to section 103 (16 U.S.C. 1373). In accordance with section 103(d), regulations must be made on the record after opportunity for an agency hearing on such regulations and, in the case of a waiver, on the determination by the Director to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)).

(b) [Reserved]

§ 18.71 Definitions.

Definitions shall be the same as in subpart A of this part except as follows:

(a) *Party* means for the purposes of this subpart:

(1) The Director or his representative; or

(2) A person who has notified the Director by specified dates of his or her intent to participate in the hearing pursuant to §§ 18.75 and 18.84(b).

(b) *Presiding officer* means, for the purposes of this subpart, an administrative law judge of the Office of Hearings and Appeals appointed in accordance with 5 U.S.C. 3105.

(c) *Witness* means, for the purposes of this subpart, any person who provides direct testimony on the proposed regulations and waiver. A person may be both a party and a witness.

§ 18.72 Scope of regulations.

The procedural regulations in this subpart govern the practice and procedure in hearings held under section 103(d) of the Act. These hearings will be governed by the provisions of sections 556 and 557 of the Administrative Procedure Act (5 U.S.C. 556 and 557). The regulations shall be construed to secure the just, speedy, and inexpensive determination of all issues raised with

respect to any waiver and/or regulation proposed pursuant to section 103(d) of the act in a manner which gives full protection to the rights of all persons affected thereby.

§ 18.73 Burden of proof.

The proponents of the proposed regulations and waiver must demonstrate that any taking or importation of any marine mammal under such proposed regulations and waiver would be consistent with the act.

§ 18.74 Notice of hearing.

(a) A notice of hearing on any proposed regulations shall be published in the FEDERAL REGISTER, together with the Director's proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)), where applicable.

(b) The notice shall state:

(1) The nature of the hearing;

(2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;

(3) The legal authority under which the hearing is to be held;

(4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d));

(5) Issues of fact which may be involved in the hearing;

(6) If an Environmental Impact Statement is required, the date of publication of the Statement and the times and place(s) where the Statement and comments thereon may be viewed and copied;

(7) Any written advice received from the Marine Mammal Commission;

(8) The times and place(s) where records and submitted direct testimony will be kept for public inspection, along with appropriate references to any other documents;

(9) The final date for filing with the Director a notice of intent to participate in the hearing pursuant to § 18.75;

(10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;